IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.58 OF 2003

1. Union of India through the Secretary, Ministry of Finance, Govt. of India, North Block New Delhi 100011

2. The Chief Commissioner of Central Excise, Central Excise Bldg. M.K.Road, Bombay-400020

3. The Chairman, Central Board of Excise and Customs Ministry of Finance Govt. of India North Block, New Delhi-110011

4. Union Public Service Commission, Dholpur House, Shahjahan Road New Delhi-110011

..Petitioners (Or.Respondents)

Versus

Shri.Rajan Jotiram Beley of Mumbai, of Major age Commissioner of Central Excise (Appeal), having his office in CGO Block CBD Belapur, New Bombay residing at Quarter No.A/2 Central Excise Officers Quarters, Kartak Road Wadala, Bombay-400031

..Respondent (Ori.Applicant)

....

Mr.Suresh Kumar with Mr.K.B.Rao for the Petitioners
Mr.C.J.Sawant Senior Counsel with Mr.Sai Kumar Rammurthy with Mr.S.P.Bharati i/b M/s. H.R.Shetty and Co. for Respondents.

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**CORAM: S.RADHAKRISHNAN AND
SMT.V.K.TAHILRAMANI,JJ.**

DATE : DECEMBER 20,2004

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J):

1. By this petition, the petitioners seek to challenge the order dated 8th June, 2001 passed by the Central Administrative Tribunal Mumbai (for short 'Tribunal) in O.A.No. 1086 of 1998.

2. The respondent Rajan Jotiram Beley is working as Commissioner of Central Excise. The selection of the Officers of the Central Excise and Customs Department was held in the month of April 1997 for promotion to the Grade of Commissioner of Customs and Central Excise. The case of the respondent was also considered. The Annual Confidential Reports for eight years ending 31st March, 1996 were considered for the vacancies in the year 1996-97. The benchmark of 'Very Good' was required for the said promotion. According to the petitioners, the respondent did not make it to the minimum benchmark of 'Very Good', hence, he was not selected.

3. According to the learned counsel for respondent, the selection held in April 1987 was arbitrary. It is further contended that the Annual Confidential Report for the year 1991-92 was not

considered by the Department Promotion Committee (for short 'DPC'). According to the respondent, for the period of eight years, he had two 'Good' and five 'Very Good' gradings in Annual Confidential Reports and therefore, it would be presumed that for the year 1990-91 when the Confidential Reports of the respondents were not written, the grading of the said Confidential Report would have been 'Very Good'. In such case the necessary benchmark of 'Very Good' would have been achieved by the respondent. It is further contended on behalf of the respondent that the proper Confidential Reports were not produced before the DPC and therefore, there is strong probability that the DPC wrongly took into consideration the remark 'Average' given by the Reporting Officer for the year 1991-92 and therefore, given the grading as 'Good' whereas the reviewing officer has given the remark as 'Very Good'.

4. The respondent made representation ventilating his grievances. However, the representation made by the respondent was of no avail, hence, the respondent preferred Original Application before the Tribunal. After hearing both the sides, the Tribunal disposed of the said original application by order dated 8th June, 2001 with directions to

re-consider the case of the respondent by convening a review DPC. Being aggrieved by the said order, the petitioners have preferred the present writ petition.

5. We have heard the learned advocate Mr.Suresh Kumar appearing for the petitioners and Mr.C.J.Sawant, Senior Counsel appearing for the respondent. We have also perused the Annual Confidential Reports and record of DPC which were produced by the learned advocate for the petitioners.

6. There is no dispute in relation to the fact that for the years 1992-93, 1993-94 and 1994-95 the grading of the respondents was ‘Very Good’. There is also no controversy that for the year 1990-91 the Confidential Report was not written. However, the controversy is in relation to the Confidential Report relating to the year 1991-92. We have perused the remarks on the Confidential Report pertaining to the year 1991-92 which was produced for our perusal. We have observed therein that the Reporting Officer has given the grading as ‘Average". However, the Reviewing Officer has given the grading of ‘Very Good’. The Reviewing Officer has also given detailed and cogent reasons therein for giving grading to the respondent as

'Very Good'. However, on going through the record of the DPC, we find that for the year 1991-92 the respondent has been given the grading as 'Good'. We fail to see that when the Reviewing Officer has given grading of 'Very Good', how the DPC could have graded the respondent as only 'Good'. From this, it appears that the stand taken by the respondent that the correct and proper Confidential Reports were not produced before the DPC, appears to be correct.

7. It is further noticed by us that for the year 1991-92 the DPC has taken the assessment of the Annual Confidential Reports to be 'Good' and after considering the same to be 'Good' has given overall assessment to the respondent for the eight years as 'Good'. Due to the overall assessment being given as 'Good' the respondent has missed the benchmark of 'Very Good'. In our opinion, this overall grading of 'Good' has been done on the wrong premise that the Annual Confidential Report for 1991-92 was 'Good'. In such case, we can find no fault with the decision of the Tribunal that the case of the respondent be reconsidered by convening a review DPC.

8. Shri.Suresh Kumar, the learned advocate appearing for the Petitioners, has submitted that

the DPC could not be expected to make investigation about the confidential reports. He has submitted that it is not suggested in the present case that the DPC acted malafide and hence the decision of the DPC cannot be found fault with. In support of this contention, he has placed reliance on the ruling of the Supreme Court in the case of **Prakash Chand Sharma Vs. The Oil and Natural Gas Commission and Ors. reported in (S.C.) 1970 S.L.R. page 116**. In the said decision, it has been observed that the DPC could not be expected to make investigation about the confidential reports. Moreover, it was not suggested that the DPC acted malafide. Mr.Suresh Kumar has submitted that in the present case also, no malafides have been attributed to the DPC and it was not expected that the DPC would make an investigation about the confidential reports. In our opinion in the present case, there is no question of making investigation about the confidential reports. It is clear that the DPC has not taken into account the remarks of the Reviewing Officer in the year 1991-1992 wherein the respondent has been graded as 'Very Good. If the DPC had failed to take the remarks into consideration, obviously, the decision based thereon would have to be set aside, which has rightly been done by the Tribunal.

9. Mr.Suresh Kumar has also placed reliance upon the decision in the case of **Anil Katiyar (Mrs.) Vs. Union of India and others reported in (1997) 1 SCC 280**. However, on going through the said decision, we find that the ratio laid down in the said case does not apply to the facts of the present case.

10. In view of the above, we are of the opinion that the directions given by the Tribunal to reconsider the case of the applicant by convening a review DPC, are proper and legal. No interference is called for.

11. Petition is dismissed. Rule is discharged. It is made clear that the review DPC should be convened as expeditiously as possible and the matter to be disposed by the DPC preferably by end of February, 2005.

[S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]